

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM JOHN GREEN,
Defendant.

CASE NO. 11cr938-LAB

ORDER DENYING:

**1) EMERGENCY MOTION FOR
RELEASE PENDING APPEAL
[Dkt. 329];**

**2) MOTION FOR EVIDENTIARY
HEARING [Dkt. 329]; and**

**3) MOTION TO GRANT REDUCTION
IN SENTENCE [Dkt. 342]**

In September 2020, the Court sentenced William Green to eighteen months in custody after finding that he violated supervised release by accessing pornographic material on his cell phone. Green was on supervised release following his conviction for possessing child pornography.

Green didn't admit the violation, so the court conducted an evidentiary hearing to resolve the allegations. Evidence presented at the hearing established that Green's personal cell phone had been used to access a

1 pornographic website. Green testified that he wasn't the one using the phone.
2 Instead, the real culprit was a "very distraught and crying" woman, (Dkt. 311 at
3 24:9–10), whom Green encountered near his apartment and invited in. Green
4 said he knew the woman as one of his "counseling clients," and that her name
5 was either Sasha Gonzalez or Sasha Thomas. (*Id.* at 27:24–25.) Although
6 Green knew "Sasha" was a recovering drug addict, he offered her wine. He
7 also consumed wine, then he fell asleep. (*Id.* at 25:1–4.) Supposedly while
8 Green slept, Sasha accessed his phone (which he was wasn't sure was locked
9 or unlocked) (*see id.* at 27:13–15, 26:7–10), logged on to Amazon.com using
10 Green's account number, purchased "at least two" sex toys, (*id.* at 26:3–6),
11 cast videos from Green's phone to the TV in his master bedroom, (*id.* at 19:2–
12 20), searched a pornographic website for videos involving dead women, sex
13 dolls, and a type of men's sex toy, (*id.* at 17:4–25; Gov't Ex. 6, attached as Ex.
14 A to this Order (showing Green's phone accessed <http://xnxx.com/search/silicone+Sex+doll>)), and finally searched eBay for the same type of men's sex
15 toy. (Ex. A (Green's phone accessed a website titled "fleshlight | eBay").) Green
16 assertedly woke up around midnight, reclaimed his phone, kicked Sasha out
17 of the apartment, and cancelled the Amazon orders. (*Id.* at 25:14–26:6.).

19 After hearing Green out, the Court, as trier of fact, determined that his
20 version of the events was untruthful—or at a bare minimum, a complete
21 confabulation. Indeed, each link in chain of events Green related made his
22 story less plausible. The Court concluded that Green's testimony was
23 "incredible," and that he, not "Sasha" had accessed the pornographic website.
24 Accordingly, the Court revoked his supervised release and imposed an
25 18-month sanction. (*Id.* at 35:3–37:23.). Green, who is scheduled to be
26 released in November 2021, now seeks early release pending appeal.

27 To warrant release while his appeal of a supervised release revocation
28 is pending, Green must show that "exceptional circumstances" exist. *U.S. v.*

1 *Bell*, 820 F.2d 980, 981 (9th Cir. 1987). This is an “extremely demanding test”
 2 satisfied only in “extraordinary case[s].” *U.S. v. Loya*, 23 F.3d 1529, 1531 (9th
 3 Cir. 1994). It’s “substantially stricter” than the standard applicable where the
 4 defendant appeals his conviction or original sentence. *Id.*

5 Green’s past deception—under oath, no less—make it harder for him to
 6 meet this standard. And it becomes harder still when there’s evidence that
 7 Green continues to try to deceive the Court, by first asking his physicians to
 8 get in on the act, and then by trying to coerce them with litigation threats:

9 [Green] came to clinic today (unscheduled) insisting
 10 that we have to write something that he can be
 11 release[d] from prison! He was in my office last week
 12 as well for the same issues. [H]e says that he did his
 13 time and next 2 months is too much for him! He was
 14 explained that we don't judge our patients, all we do is
 15 medical care, he says that I have to write something
 16 and print for him, so the judge will release him! He is
 17 again here regarding his RIS denial. He states that he
 should be go home because of possibility of covid-19
 infection. SARS CoV 2 RNA NOT DETECTED on
 6-18-2021 as well as 07-22-0221.

18 . . .

19 Although his RIS was denied, inmate end of sentence
 20 is (11/11/21), he was told again and again that request
 21 and reapply for RIS should be submitted. He says that
 22 sued the Federal [*sic*] once and he may ha[ve] to do it
 again because he doesn't like his current NP and
 assigned physician and want[s] other providers!

23 (Def. Med. Records (“DMR”), Dkt. 348 at 2.)¹

24 The Court is reluctant to credit Green’s uncorroborated statements, given
 25 his history of lying under oath and his recent attempt to coerce others into

26 _____
 27 ¹ As discussed below, Green maintains that his provider later apologized for
 28 writing these statements in Green’s medical notes, but he offers only his own
 hearsay assertions to support his claim.

1 creating misleading medical records to secure his release. So, while Green
 2 argues that his health, his medical care in BOP custody, and the danger of
 3 COVID-19 reinfection all warrant his release, (see Dkt. 329), the Court has
 4 looked for support for those claims only outside Green's affidavits. The reliable
 5 evidence offers little to corroborate and much to contradict his claim that he
 6 must be released due to extraordinary medical need.

7 **A. Green's COVID Risk Doesn't Warrant His Release**

8 The pandemic has resurged since the Court denied Green's first two
 9 motions for compassionate release in a May 13, 2021 Order.² But Green could
 10 mitigate that risk by taking the vaccination that he has thus far refused. (DMR
 11 at 2, 316.)

12 He asserts that he "cannot be safely vaccinated" because he is
 13 "[i]mmune [c]ompromise[d]," (Dkt. 329 at 3), but there are at least three glaring
 14 flaws in this assertion. First, there's nothing in his medical records to
 15 corroborate the claim of immunocompromise.³ Second, his physicians don't
 16 appear to have recommended that he not be vaccinated—to the contrary, they
 17 offered him a vaccine. (Dkt. 341 at 3; DMR at 2, 316.) And third, the claim that
 18

19 ² See Center for Disease Control, *Trends in Number of COVID-19 Cases and*
 20 *Deaths in the US Reported to CDC, by State/Territory*,
 21 https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last accessed
 22 August 24, 2021) (showing nationwide new case 7-day moving averages of
 33,865 on May 13, 2021 and 124,383 on August 22, 2021).

23 ³ Green asserts that his immunocompromise results from his having contracted
 24 COVID three times, "with concurrent MRSA, pneumonia, strep-blood, and
 25 urinary tract infections." (Dkt. 341 at 3.) But of these maladies, only a urinary
 26 tract infection and one bout of COVID appear recent—the rest are referenced
 27 in his medical history, which itself is largely self-reported. Even so, there's no
 28 credible evidence that any of these conditions would compromise his immune
 system. (See DMR at 143 (diagnosis of urinary tract infection); *id.* at 143, 171
 (mid- to late-January 2021 COVID infection); *id.* at 208 (self-reported MRSA);
id. at 209 ("Hx [history] pneumonia").)

1 medical professionals recommended against vaccination is particularly
 2 dubious considering the CDC's recommendation that severely
 3 immunocompromised people receive *additional* vaccine doses. Center for
 4 Disease Control, *COVID-19 Vaccines for Moderately to Severely*
 5 *Immunocompromised People*, [https://www.cdc.gov/coronavirus/2019-ncov/](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/immuno.html)
 6 [vaccines/recommendations/immuno.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/immuno.html) (accessed August 24, 2021).

7 Green hasn't justified his refusal to take a simple and readily available
 8 step to reduce his risk of contracting COVID, so he can't use that self-imposed
 9 risk to support his early release from custody.

10 **B. Green's Medical Conditions Don't Establish Any Extraordinary** 11 **Need for Release**

12 Green argues next that six new or worsened health issues warrant his
 13 release. But while his medical records largely undermine and contradict his
 14 claims, at a minimum they show that his conditions are adequately managed:

15 (1) "[M]ini-stroke" (Dkt. 329 at 3): Green's medical records evidence a
 16 "TIA," which the Court understands to mean a transient ischemic
 17 attack, sometimes called a mini-stroke. But the records also reflect
 18 that such an episode represents a continuation rather than a
 19 deterioration of Green's physical condition: he "[c]laims he had similar
 20 episodes in the past." (DMR at 62–64.) The records also reflect that
 21 Green received prompt and proper medical attention for his mini-
 22 stroke under BOP care. (*Id.*)

23 (2) "[W]orsened heart failure" (Dkt. 329 at 3): Green identifies two
 24 primary incidents in support of his claimed worsened heart failure.
 25 First, he complained of chest pain on July 23, 2021. (DMR at 5.) He
 26 took prescribed nitroglycerin then called for a medical evaluation, and
 27 when his medical providers arrived, they observed that he "did NOT
 28 appear to be in cardiac distress." Because Green took medication first,

1 the Court can't conclude that he "faked [a] cardiac episode[]," as the
 2 Government argues. (Dkt. 338 at 3.) But Green's immediate access
 3 to medication and treatment indicates that his cardiac issues have
 4 been and are being adequately managed, so those issues don't
 5 require his immediate release.⁴

6 The second incident, relayed in Green's August 15, 2021
 7 supplemental brief, is a purported cardiac event on August 12, 2021
 8 for which, he argues, he received substandard care. But the Court
 9 doesn't have any record of this incident beyond Green's word and a
 10 medical readout that the Court can't interpret without expert
 11 assistance. (See Dkt. 350.) For the reasons already discussed, that's
 12 not enough. And while Green states that his physician "is advocating
 13 for Green's early release" and that the warden "told Green that she
 14 was expediting review of Green's RIS . . . [and] agreed that Green
 15 needed to be off the compound ASAP," he doesn't identify any
 16 hearsay exception that would allow the Court to rely on these
 17 purported statements.

18 (3) "[S]evere Post COVID . . . Syndrome" (Dkt. 329 at 3): Green's medical
 19 records don't support the claim that he has been diagnosed with post-
 20 COVID syndrome. On the contrary, one provider concluded that
 21 Green's "chronic fatigue" was "not associated with COVID 19
 22 infection." (DMR at 258; Dkt. 318 at 28 (self-diagnosis of post-COVID
 23 syndrome).) Nor does he explain how this condition is an emergency
 24 or would be better addressed outside of custody. Green hasn't
 25

26
 27 ⁴ Green's medical records also indicate that he "signed [a] refusal to take
 28 medication recommended by [his] cardiologist" and was "noncompliant with
 multiple orders and referrals." (DMR at 220.)

1 established either that he has post-COVID syndrome or that such a
2 condition would be an extraordinary circumstance warranting release.

3 (4)“Suspicious new skin-cancer lesions” (Dkt. 329 at 4): While Green
4 may be concerned that his skin lesions are cancerous, there’s been
5 no such diagnosis. He was referred to a dermatologist to “R[ule]/O[ut]”
6 skin cancer, an examination he apparently received before June 21,
7 2021, (see DMR at 88; *id.* at 30 (referring to “recent evaluation by
8 Dermatology”)), but Green offers no evidence beyond his word that
9 he has skin cancer.

10 (5)“Suspicious new mass in right lung” (Dkt. 329 at 4): Green appears to
11 have a mass in his lung, which his radiologist deemed a “possible
12 calcified nodule.” (DMR at 96, 462.) That physician recommended
13 monitoring the mass with a follow-up chest x-ray between September
14 2021 and March 2022—an endpoint four months after Green’s
15 scheduled release. In other words, there’s no emergency, even if
16 Green could provide evidence that this is a serious condition.

17 (6)Kidney disease (Dkt. 341 at 4): Green had “high creatnine levels” in a
18 test performed in January 2021. (DMR at 97, 131.) But subsequent
19 tests found that that level had “reduced.” (*Id.* at 97.) Once again,
20 there’s no apparent emergency and Green appears to be receiving
21 adequate medical care and monitoring.

22 Despite being seen or treated by BOP doctors for each of the above
23 complaints, Green nevertheless argues he isn’t receiving adequate care in
24 custody because he has been referred to, but hasn’t seen, six specialists: a
25 cardiologist; a neurologist; a nephrologist; a dermatologist; a gastro-
26 enterologist; and a podiatrist. But he *has* seen a dermatologist, (DMR at 30,
27 32), and there’s no evidence that any of the other referrals are urgent or
28 overdue. (DMR at 32, 36, 103, 226–27 (classifying referrals as “Routine” or

1 “Medically Necessary – Non-Emergent”); *id.* at 22, 32, 36 (target dates for
2 cardiology, nephrology, podiatry, and gastroenterology consultations on or
3 after September 1, 2021).)

4 Even if Green had shown a serious health concern, he offers no reliable
5 evidence to support his claim that early release is necessary to address his
6 health concerns. More specifically, there’s no evidence that Green’s medical
7 issues result from him being incarcerated. Likewise, Green has presented no
8 credible evidence that he would receive better care outside of custody, nor that
9 his conditions are so emergent that he needs hypothetically better medical care
10 before his appeal resolves or BOP releases him in three months. In sum, he
11 hasn’t presented any reliable evidence to establish that exceptional
12 circumstances exist to support his release pending appeal of his supervised
13 release revocation. *See Bell*, 820 F.2d at 981.

14 CONCLUSION

15 Neither Green’s claimed conditions nor his COVID-19 risk are enough to
16 free him from custody while his appeal is pending.⁵ His Motion for Release
17 Pending Appeal is **DENIED**. (Dkt. 329.) If Green can document his physician’s
18 recommendation that he be released, if BOP hasn’t given him the opportunity
19 to be examined by a cardiologist, neurologist, nephrologist, gastroenterologist,
20 and podiatrist within 30 days of this Order, or if BOP hasn’t offered adequate
21 reasons why such outside medical referrals are not indicated or necessary by
22 that time, he may move for reconsideration of this denial. Any such motion to
23

24 ⁵ The Court has reviewed and considered Green’s August 10, 2021
25 Supplemental Reply Brief, too. That brief largely repeats Green’s prior
26 arguments and provides nothing to rehabilitate his credibility. What little
27 argument it adds appears designed to undermine his physicians’ credibility.
28 Even if Green could successfully discredit his physicians based on his word
alone, he would be discrediting the only otherwise-reliable evidence available
to help him meet his burden of showing extraordinary circumstances.

1 reconsider must be supported by credible evidence that: 1) Greene can't
 2 receive or isn't receiving adequate care in custody; 2) the unaddressed issues
 3 are sufficiently serious that they must be adequately addressed before
 4 resolution of Green's appeal or his November release, whichever would come
 5 first; and 3) Green would have prompt access to adequate care once released.

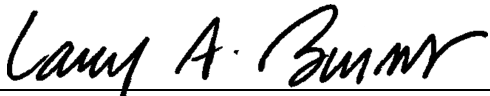
6 Green also moved for an evidentiary hearing. The Court finds that a
 7 hearing wouldn't be productive—even if Green succeeded in discrediting his
 8 physicians, as he proposes to try, he would have no credible evidence to help
 9 him meet his burden. Nor does Green identify any authority entitling him to an
 10 evidentiary hearing on a motion for release pending appeal of a revocation of
 11 supervised release. The motion for an evidentiary hearing is **DENIED**.
 12 (Dkt. 341 at 2.)

13 For the same reasons Green hasn't shown that this is an "extraordinary
 14 case" warranting release pending appeal, *Loya*, 23 F.3d at 1531, he hasn't
 15 shown "extraordinary and compelling reasons" for a reduction in sentence. 18
 16 U.S.C. § 3582(c)(1)(A)(i).⁶ His third Motion to Grant a Reduction in Sentence
 17 is **DENIED**. (Dkt. 342; see *also* Dkt. 321 (finding that factors under 18 U.S.C.
 18 § 3553(a) don't support reduction in Green's sentence).)⁷

19 The Court won't consider further supplemental briefing submitted in this
 20 case without the Court's leave—any such filings will be summarily rejected.

21 **IT IS SO ORDERED.**

22 Dated: August 24, 2021

23 
 24 **HONORABLE LARRY ALAN BURNS**
 United States District Judge

25 ⁶ The Court incorporates the findings from its earlier order denying relief under
 26 § 3582(c)(1)(A)(i).

27 ⁷ Green purports to have filed a preemptive "provisional notice of appeal."
 28 (Dkt. 341 at 1.) Whether that notice complies with the Federal Rules of
 Appellate Procedure is a question for the appellate court.